

ASSEMBLY BILL

No. 1849

Introduced by Assembly Member Leslie

January 12, 2006

An act to amend Section 290.46 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1849, as introduced, Leslie. Sex offenders.

Existing law requires the Department of Justice to make information concerning certain persons who are required to register as sex offenders available to the public via an Internet Web site, including the offender's criminal history.

This bill would also require that the date of the commission of the offender's last sexual offense be posted on the Internet Web site.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 290.46 of the Penal Code is amended to
2 read:
3 290.46. (a) On or before the dates specified in this section,
4 the Department of Justice shall make available information
5 concerning persons who are required to register pursuant to
6 Section 290 to the public via an Internet Web site as specified in
7 this section. The department shall update the Internet Web site on
8 an ongoing basis. All information identifying the victim by name,
9 birth date, address, or relationship to the registrant shall be
10 excluded from the Internet Web site. The name or address of the

1 person's employer and the listed person's criminal history other
2 than the specific crimes for which the person is required to
3 register shall not be included on the Internet Web site. The
4 Internet Web site shall be translated into languages other than
5 English as determined by the department.

6 (b) (1) On or before July 1, 2005, with respect to a person
7 who has been convicted of the commission or the attempted
8 commission of any of the offenses listed in, or who is described
9 in, paragraph (2), the Department of Justice shall make available
10 to the public via the Internet Web site his or her name and known
11 aliases, a photograph, a physical description, including gender
12 and race, date of birth, criminal history, *the date of the*
13 *commission of his or her last sexual offense*, the address at which
14 the person resides, and any other information that the Department
15 of Justice deems relevant, but not the information excluded
16 pursuant to subdivision (a).

17 (2) This subdivision shall apply to the following offenses and
18 offenders:

19 (A) Section 207 committed with intent to violate Section 261,
20 286, 288, 288a, or 289.

21 (B) Section 209 committed with intent to violate Section 261,
22 286, 288, 288a, or 289.

23 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

24 (D) Section 264.1.

25 (E) Section 269.

26 (F) Subdivision (c) or (d) of Section 286.

27 (G) Subdivision (a), (b), or (c) of Section 288, provided that
28 the offense is a felony.

29 (H) Subdivision (c) or (d) of Section 288a.

30 (I) Section 288.5.

31 (J) Subdivision (a) or (j) of Section 289.

32 (K) Any person who has ever been adjudicated a sexually
33 violent predator as defined in Section 6600 of the Welfare and
34 Institutions Code.

35 (c) (1) On or before July 1, 2005, with respect to a person
36 who has been convicted of the commission or the attempted
37 commission of any of the offenses listed in paragraph (2), the
38 Department of Justice shall make available to the public via the
39 Internet Web site his or her name and known aliases, a
40 photograph, a physical description, including gender and race,

1 date of birth, criminal history, *the date of the commission of his*
2 *or her last sexual offense*, the community of residence and ZIP
3 Code in which the person resides or the county in which the
4 person is registered as a transient, and any other information that
5 the Department of Justice deems relevant, but not the information
6 excluded pursuant to subdivision (a). On or before July 1, 2006,
7 the Department of Justice shall determine whether any person
8 convicted of an offense listed in paragraph (2) also has one or
9 more prior or subsequent convictions of an offense listed in
10 paragraph (2) of subdivision (a) of Section 290, and, for those
11 persons, the Department of Justice shall make available to the
12 public via the Internet Web site the address at which the person
13 resides. However, the address at which the person resides shall
14 not be disclosed until a determination is made that the person is,
15 by virtue of his or her additional prior or subsequent conviction
16 of an offense listed in paragraph (2) of subdivision (a) of Section
17 290, subject to this subdivision.

18 (2) This subdivision shall apply to the following offenses:

19 (A) Section 220, except assault to commit mayhem.

20 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

21 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
22 (i), of Section 286.

23 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
24 (i), of Section 288a.

25 (E) Subdivision (b), (d), (e), or (i) of Section 289.

26 (d) (1) On or before July 1, 2005, with respect to a person
27 who has been convicted of the commission or the attempted
28 commission of any of the offenses listed in, or who is described
29 in, this subdivision, the Department of Justice shall make
30 available to the public via the Internet Web site his or her name
31 and known aliases, a photograph, a physical description,
32 including gender and race, date of birth, criminal history, *the date*
33 *of the commission of his or her last sexual offense*, the
34 community of residence and ZIP Code in which the person
35 resides or the county in which the person is registered as a
36 transient, and any other information that the Department of
37 Justice deems relevant, but not the information excluded pursuant
38 to subdivision (a) or the address at which the person resides.

39 (2) This subdivision shall apply to the following offenses and
40 offenders:

1 (A) Subdivision (a) of Section 243.4, provided that the offense
2 is a felony.

3 (B) Section 266, provided that the offense is a felony.

4 (C) Section 266c, provided that the offense is a felony.

5 (D) Section 266j.

6 (E) Section 267.

7 (F) Subdivision (c) of Section 288, provided that the offense is
8 a misdemeanor.

9 (G) Section 647.6.

10 (H) Any person required to register pursuant to Section 290
11 based upon an out-of-state conviction, unless that person is
12 excluded from the Internet Web site pursuant to subdivision (e).
13 However, if the Department of Justice has determined that the
14 out-of-state crime, if committed or attempted in this state, would
15 have been punishable in this state as a crime described in
16 subparagraph (A) of paragraph (2) of subdivision (a) of Section
17 290, the person shall be placed on the Internet Web site as
18 provided in subdivision (b) or (c), as applicable to the crime.

19 (e) (1) If a person has been convicted of the commission or
20 the attempted commission of any of the offenses listed in this
21 subdivision, and he or she has been convicted of no other offense
22 listed in subdivision (b), (c), or (d) other than those listed in this
23 subdivision, that person may file an application with the
24 Department of Justice, on a form approved by the department, for
25 exclusion from the Internet Web site. If the department
26 determines that the person meets the requirements of this
27 subdivision, the department shall grant the exclusion and no
28 information concerning the person shall be made available via
29 the Internet Web site described in this section. He or she bears
30 the burden of proving the facts that make him or her eligible for
31 exclusion from the Internet Web site. However, a person who has
32 filed for or been granted an exclusion from the Internet Web site
33 is not relieved of his or her duty to register as a sex offender
34 pursuant to Section 290 nor from any otherwise applicable
35 provision of law.

36 (2) This subdivision shall apply to the following offenses:

37 (A) A felony violation of subdivision (a) of Section 243.4.

38 (B) Section 647.6, provided the offense is a misdemeanor.

39 (C) (i) An offense for which the offender successfully
40 completed probation, provided that the offender submits to the

1 department a certified copy of a probation report, presentencing
2 report, report prepared pursuant to Section 288.1, or other official
3 court document that clearly demonstrates both of the following:

4 (I) The offender was the victim's parent, stepparent, sibling, or
5 grandparent.

6 (II) The crime did not involve either oral copulation or
7 penetration of the vagina or rectum of either the victim or the
8 offender by the penis of the other or by any foreign object.

9 (ii) An offense for which the offender is on probation at the
10 time of his or her application, provided that the offender submits
11 to the department a certified copy of a probation report,
12 presentencing report, report prepared pursuant to Section 288.1,
13 or other official court document that clearly demonstrates both of
14 the following:

15 (I) The offender was the victim's parent, stepparent, sibling, or
16 grandparent.

17 (II) The crime did not involve either oral copulation or
18 penetration of the vagina or rectum of either the victim or the
19 offender by the penis of the other or by any foreign object.

20 (iii) If, subsequent to his or her application, the offender
21 commits a violation of probation resulting in his or her
22 incarceration in county jail or state prison, his or her exclusion,
23 or application for exclusion, from the Internet Web site shall be
24 terminated.

25 (iv) For the purposes of this subparagraph, "successfully
26 completed probation" means that during the period of probation
27 the offender neither received additional county jail or state prison
28 time for a violation of probation nor was convicted of another
29 offense resulting in a sentence to county jail or state prison.

30 (f) The Department of Justice shall make a reasonable effort to
31 provide notification to persons who have been convicted of the
32 commission or attempted commission of an offense specified in
33 subdivision (b), (c), or (d), that on or before July 1, 2005, the
34 department is required to make information about specified sex
35 offenders available to the public via an Internet Web site as
36 specified in this section. The Department of Justice shall also
37 make a reasonable effort to provide notice that some offenders
38 are eligible to apply for exclusion from the Internet Web site.

39 (g) (1) A designated law enforcement entity, as defined in
40 subdivision (f) of Section 290.45, may make available

1 information concerning persons who are required to register
2 pursuant to Section 290 to the public via an Internet Web site as
3 specified in paragraph (2).

4 (2) The law enforcement entity may make available by way of
5 an Internet Web site the information described in subdivision (c)
6 if it determines that the public disclosure of the information
7 about a specific offender by way of the entity's Internet Web site
8 is necessary to ensure the public safety based upon information
9 available to the entity concerning that specific offender.

10 (3) The information that may be provided pursuant to this
11 subdivision may include the information specified in subdivision
12 (b) of Section 290.45. However, that offender's address may not
13 be disclosed unless he or she is a person whose address is on the
14 Department of Justice's Internet Web site pursuant to subdivision
15 (b) or (c).

16 (h) For purposes of this section, "offense" includes the
17 statutory predecessors of that offense, or any offense committed
18 in another jurisdiction that, if committed or attempted to be
19 committed in this state, would have been punishable in this state
20 as an offense listed in subparagraph (A) of paragraph (2) of
21 subdivision (a) of Section 290.

22 (i) Notwithstanding Section 6254.5 of the Government Code,
23 disclosure of information pursuant to this section is not a waiver
24 of exemptions under Chapter 3.5 (commencing with Section
25 6250) of Title 1 of Division 7 of the Government Code and does
26 not affect other statutory restrictions on disclosure in other
27 situations.

28 (j) (1) Any person who uses information disclosed pursuant to
29 this section to commit a misdemeanor shall be subject to, in
30 addition to any other penalty or fine imposed, a fine of not less
31 than ten thousand dollars (\$10,000) and not more than fifty
32 thousand dollars (\$50,000).

33 (2) Any person who uses information disclosed pursuant to
34 this section to commit a felony shall be punished, in addition and
35 consecutive to any other punishment, by a five-year term of
36 imprisonment in the state prison.

37 (k) Any person who is required to register pursuant to Section
38 290 who enters an Internet Web site established pursuant to this
39 section shall be punished by a fine not exceeding one thousand

1 dollars (\$1,000), imprisonment in a county jail for a period not to
2 exceed six months, or by both that fine and imprisonment.

3 (I) (1) A person is authorized to use information disclosed
4 pursuant to this section only to protect a person at risk.

5 (2) Except as authorized under paragraph (1) or any other
6 provision of law, use of any information that is disclosed
7 pursuant to this section for purposes relating to any of the
8 following is prohibited:

9 (A) Health insurance.

10 (B) Insurance.

11 (C) Loans.

12 (D) Credit.

13 (E) Employment.

14 (F) Education, scholarships, or fellowships.

15 (G) Housing or accommodations.

16 (H) Benefits, privileges, or services provided by any business
17 establishment.

18 (3) This section shall not affect authorized access to, or use of,
19 information pursuant to, among other provisions, Sections 11105
20 and 11105.3, Section 8808 of the Family Code, Sections 777.5
21 and 14409.2 of the Financial Code, Sections 1522.01 and
22 1596.871 of the Health and Safety Code, and Section 432.7 of
23 the Labor Code.

24 (4) (A) Any use of information disclosed pursuant to this
25 section for purposes other than those provided by paragraph (1)
26 or in violation of paragraph (2) shall make the user liable for the
27 actual damages, and any amount that may be determined by a
28 jury or a court sitting without a jury, not exceeding three times
29 the amount of actual damage, and not less than two hundred fifty
30 dollars (\$250), and attorney's fees, exemplary damages, or a civil
31 penalty not exceeding twenty-five thousand dollars (\$25,000).

32 (B) Whenever there is reasonable cause to believe that any
33 person or group of persons is engaged in a pattern or practice of
34 misuse of the information available via an Internet Web site
35 established pursuant to this section in violation of paragraph (2),
36 the Attorney General, any district attorney, or city attorney, or
37 any person aggrieved by the misuse is authorized to bring a civil
38 action in the appropriate court requesting preventive relief,
39 including an application for a permanent or temporary injunction,
40 restraining order, or other order against the person or group of

1 persons responsible for the pattern or practice of misuse. The
2 foregoing remedies shall be independent of any other remedies or
3 procedures that may be available to an aggrieved party under
4 other provisions of law, including Part 2 (commencing with
5 Section 43) of Division 1 of the Civil Code.

6 (m) The public notification provisions of this section are
7 applicable to every person described in this section, without
8 regard to when his or her crimes were committed or his or her
9 duty to register pursuant to Section 290 arose, and to every
10 offense described in this section, regardless of when it was
11 committed.

12 (n) On or before July 1, 2006, and every year thereafter, the
13 Department of Justice shall make a report to the Legislature
14 concerning the operation of this section.

15 (o) A designated law enforcement entity and its employees
16 shall be immune from liability for good faith conduct under this
17 section.